

IC 29-3-3

Chapter 3. Proceedings in Lieu of Guardianships

IC 29-3-3-1

Payment of debt owed to minor; delivery of minor's property in possession of another; use of payment or property

Sec. 1. (a) Any person indebted to a minor or having possession of property belonging to a minor in an amount not exceeding ten thousand dollars (\$10,000) may pay the debt or deliver the property without the appointment of a guardian, giving of bond, or other order of court directly to any person having the care and custody of the minor with whom the minor resides.

(b) Persons receiving property for a minor under this section are obligated to apply the property to the support, use, and benefit of the minor.

(c) This section does not apply if the person paying or delivering the property knows that a guardian has been appointed for the minor or that proceedings for appointment of a guardian for the minor are pending.

(d) A person who pays or delivers property in accordance with this section in good faith is not responsible for the proper application of that property.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.4; P.L.42-1998, SEC.3; P.L.252-2001, SEC.26.

IC 29-3-3-2

Property of incapacitated person not in excess of \$10,000; deposit, delivery, and disposition of property; compensation and expenses of receiver

Sec. 2. When the entire property of an incapacitated person does not exceed the value of ten thousand dollars (\$10,000), the court may, without the appointment of a guardian, giving of bond, or other order of court, authorize:

(1) the deposit of the property in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court; or

(2) if the property does not consist of money, the delivery of the property to a suitable person designated by the court.

The person receiving the property shall hold and dispose of the property in the manner the court directs and is entitled to reasonable compensation and to reimbursement for reasonable expenses incurred in good faith on behalf of the incapacitated person and approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.5; P.L.252-2001, SEC.27.

IC 29-3-3-3

Custody of minor by parents; consents, waivers, and powers of attorney provided by statute or Internal Revenue Code; consent to medical treatment

Sec. 3. Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or in some other proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married, the parents of the minor jointly (or the survivor if one (1) parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor:

- (1) Consent to the application of subsection (c) of Section 2032A of the Internal Revenue Code, which imposes personal liability for payment of the tax under that Section.
- (2) Consent to the application of Section 6324A of the Internal Revenue Code, which attaches a lien to property to secure payment of taxes deferred under Section 6166 of the Internal Revenue Code.
- (3) Any other consents, waivers, or powers of attorney provided for under the Internal Revenue Code.
- (4) Waivers of notice permissible with reference to proceedings under IC 29-1.
- (5) Consents, waivers of notice, or powers of attorney under any statute, including the Indiana inheritance tax law (IC 6-4.1) and the Indiana adjusted gross income tax law (IC 6-3).
- (6) Consent to unsupervised administration as provided in IC 29-1-7.5.
- (7) Federal and state income tax returns.
- (8) Consent to medical or other professional care, treatment, or advice for the minor's health and welfare.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.64; P.L.155-1990, SEC.1; P.L.192-2002(ss), SEC.171.

IC 29-3-3-3.5

Custodians of individual retirement accounts

Sec. 3.5. (a) Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or another proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married:

- (1) the parents of the minor jointly or one (1) parent of the minor individually, if both parents are not incapacitated persons;
- (2) one (1) parent, if one (1) of the parents is an incapacitated person; or
- (3) the survivor, if one (1) parent is deceased and if the survivor is not an incapacitated person;

have the right, without the appointment of a guardian, giving of bond, or order or confirmation of court, to act as custodians of an individual retirement account established for the minor under 26 U.S.C. 408.

- (b) IC 30-2-8.5-27(b), IC 30-2-8.5-27(e), and IC 30-2-8.5-28 apply

to this section.

As added by P.L.264-1995, SEC.1.

IC 29-3-3-4

Temporary guardians; notice; suspension of guardian; powers and responsibilities

Sec. 4. (a) If:

- (1) a guardian has not been appointed for an incapacitated person or minor;
- (2) an emergency exists;
- (3) the welfare of the incapacitated person or minor requires immediate action; and
- (4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a specified period not to exceed ninety (90) days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without advance notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If:

- (1) a petition is filed under this section for the appointment of a temporary guardian; and
- (2) each person required to receive notice under IC 29-3-6-1(a) has not:
 - (A) received a complete copy of the petition and notice required by IC 29-3-6-2 before the court considers and acts on the petition; or
 - (B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of the notice required under IC 29-3-6-2 before the court considers and acts on the petition;

the petitioner shall, on the earlier of the date the court enters an order scheduling a hearing on the petition or the date the court enters an order appointing a temporary guardian, serve complete copies of the petition, the court's order, and the notice required by IC 29-3-6-2 on every person entitled to receive notice under IC 29-3-6-1(a) and on each additional person to whom the court directs that notice be given. The requirements of this subsection are in addition to the petitioner's obligations under Rule 65 of the Indiana Rules of Trial Procedure to make a specific showing of the petitioner's efforts to provide advance notice to all interested persons or the reasons why advance notice cannot or should not be given.

(c) If the court finds that a previously appointed guardian is not

effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

(d) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person or minor in an appointment made under this section.

(e) Proceedings under this section are not subject to the provisions of IC 29-3-4.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.65; P.L.154-1990, SEC.13; P.L.178-2011, SEC.3.

IC 29-3-3-5

Application for public assistance or transfer; authority of chief of social services at state institution

Sec. 5. The chief of social services (or a person designated by the chief of social services) at any institution under the control of the division of mental health and addiction or the division of disability and rehabilitative services may execute the necessary documents to make applications on behalf of a patient in the institution to receive public assistance or to transfer the patient to an alternate care facility without the appointment of a guardian or other order of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.793; P.L.1-1993, SEC.214; P.L.40-1994, SEC.74; P.L.215-2001, SEC.105; P.L.141-2006, SEC.110.

IC 29-3-3-6

Surviving parent; custody proceedings; temporary guardian or guardian ad litem; hearing

Sec. 6. (a) The surviving parent of a minor does not have the right to custody of the minor without a proceeding authorized by law if the parent was not granted custody of the minor in a dissolution of marriage decree and the conditions specified in this section exist.

(b) If:

- (1) the surviving parent, at the time of the custodial parent's death, had required supervision during parenting time privileges granted under a dissolution of marriage decree involving the minor; or
- (2) the surviving parent's parenting time privileges with the minor had been suspended at the time of the death of the custodial parent;

the court on petition by any person, including a temporary custodian

named under IC 31-17-2-11 (or IC 31-1-11.5-27 before its repeal), or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty (60) days.

(c) If a petition is filed under this section, a court shall appoint a guardian ad litem (as defined in IC 31-9-2-50) or a court appointed special advocate (as defined in IC 31-9-2-28) for the child. A guardian ad litem or court appointed special advocate appointed under this section serves until removed by the court.

(d) If a temporary guardian is appointed without notice and the minor files a petition that the guardianship be terminated or the court order modified, the court shall hold a hearing and make a determination on the petition at the earliest possible time.

(e) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

(g) The court shall appoint a guardian under this article if the court finds that the surviving parent is not entitled to the right of custody of the minor.

As added by P.L.155-1990, SEC.2. Amended by P.L.1-1993, SEC.215; P.L.1-1997, SEC.119; P.L.68-2005, SEC.7.

IC 29-3-3-7

Standby guardians

Sec. 7. (a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective

upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

- (1) an allegation of child abuse or neglect under IC 31-33;
- (2) an open child in need of services case under IC 31-34; or
- (3) an open delinquency case under IC 31-37.

(f) A standby guardian shall have all the powers granted to a guardian under this article.

As added by P.L.178-2011, SEC.4. Amended by P.L.149-2012, SEC.9.